



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: April 28, 2017  
MAHS Docket No.: 17-003060  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, telephone hearing was held on April 4, 2017, from Lansing, Michigan. Petitioner represented himself. [REDACTED] Hearing Facilitator, represented the Department of Health and Human Services (Department). The hearing record was closed at the conclusion of the hearing.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that the Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On October 14, 2016, the Petitioner submitted an application for State Disability Assistance (SDA) benefits alleging disability. Exhibit A, p 556.
2. On February 10, 2017, the Medical Review Team (MRT) determined that the Petitioner did not meet the disability standard for State Disability Assistance (SDA) because it determined that his impairments do not prevent employment of 90 days or more. Exhibit A, pp 556-551.
3. On February 16, 2017, the Department sent the Petitioner notice that it had denied the application for cash assistance. Exhibit A, p 578.

4. On February 28, 2017, the Department received the Petitioner's hearing request, protesting the denial of cash assistance based on disability.
5. The Petitioner is a [REDACTED]-year-old man whose birth date is [REDACTED].
6. Petitioner is 5' 7" tall and weighs 212 pounds.
7. The Petitioner has a limited education.
8. The Petitioner is able to read and write and does have basic math skills.
9. The Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
10. The Petitioner has past relevant work experience changing tires for an automobile repair business in 2009. Exhibit A, p 462.
11. The Petitioner has past relevant work experience working in a factory as a grinder and fork lift operator in 2007. Exhibit A, p 462.
12. The Petitioner has past relevant work experience as a camera operator.
13. The Petitioner's disability claim is based on a back injury. Exhibit A, p 569.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The client is responsible for providing evidence needed to prove disability or blindness. A client who refuses or fails to submit to an exam necessary to determine disability or blindness cannot be determined disabled or blind and you should deny the application or close the case. It is not necessary to return the medical evidence to DDS for another

decision in this instance. Department of Health and Human Services Bridges Eligibility Manual (BEM) 260 (July 1, 2015), pp 4-5.

In this case, the Department presented credible evidence that Petitioner refused to cooperate with the determination of his disability and therefore he cannot be found to be disabled as directed by BEM 260.

However, Petitioner's case was submitted to the medical review team for a determination of disability, who denied his application of February 10, 2017. The review of Petitioner's case will continue based on the objective medical evidence entered into the hearing record.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

#### STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Petitioner testified that he has not been employed since 2013 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Petitioner is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

#### STEP 2

Does the client have a severe impairment that prevents work for more than 90 days? If no, the client is not disabled.

At step two, a determination is made whether the Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921). If the Petitioner does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Petitioner has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that prevents work for more than 90 days.

The Petitioner is a 55-year-old man that is 5' 7" tall and weighs 212 pounds. The Petitioner alleges disability due to chronic back pain from injuries sustained in a 2013 automobile accident.

The objective medical evidence indicates the following:

Petitioner was referred for back surgery in 2015, which was delayed until his hypertension could be controlled. On [REDACTED], Petitioner underwent spinal fusion and spinal decompression surgery for a diagnosis of grade 1 spondylolisthesis at L4, L5, and S1, degenerative disc disease, and an annular tear at L4-L5 with severe right L5 and S1 radiculopathy post automobile accident. Treating physicians recommended early ambulation and frequent dorsiflexion of his ankles. On [REDACTED], treating physicians observed that Petitioner's range of motion of his legs was limited but his strength was rated at 5/5 on the left, and 3/5 on the right, and his upper body strength was rated at 5/5. On [REDACTED], treating physicians found Petitioner capable of effective ambulation with a cane. By [REDACTED], Petitioner had not required additional hospital treatment.

Petitioner testified that he sleeps approximately 6.5 hours each night and takes a daily nap.

Petitioner has been diagnosed with Adjustment Disorder with Depressed Mood by a consultative physician on [REDACTED]. Petitioner testified that he is not prevented from performing work by any mental impairments.

The evidence on the record indicates that the Petitioner's was been diagnosed with degenerative disc disease by a treating physician, which has resulted in significant impairments to his ability to perform work related activities. Petitioner's credible

testimony of chronic pain that limits his ability to walk has a significant effect on his ability to work.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on the Petitioner's ability to perform work activities. The Petitioner's impairments have lasted continuously, or are expected to last for more than 90 days. The Petitioner is not disqualified from receiving disability benefits at step 2 and the analysis will continue.

### STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Petitioner is disabled. If it does not, the analysis proceeds to the next step.

The Petitioner's impairment failed to meet the listing for a back injury under section 1.04 Disorders of the spine because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively. [REDACTED], Petitioner leg strength was rated at 5/5 on the left and 3/5 on the right. Petitioner's upper body strength was rated at 5/5.

The medical evidence of the Petitioner's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

### STEP 4

Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Petitioner's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Petitioner's impairments,

including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do his past relevant work, the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Semi-skilled work. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks. 20 CFR 416.968(b).

On July 29, 2015, Petitioner was limited to lifting 5 pounds or less, but there is no evidence that his condition has not improved since undergoing corrective surgery. On September 11, 2015, Petitioner was found capable of effective ambulation, getting on/off a bed, and his strength was rated in his legs at 5/5 on the left, and 3/5 on the right. A treating physician found Petitioner capable of effective ambulation with a cane. Petitioner's upper extremity strength was rated at 5/5 by a treating physician. Petitioner

testified that he is capable of making his bed, straightening up his home, and taking out the trash. Petitioner testified that he shops for groceries and is capable of preparing his own meals. This Administrative Law Judge finds that Petitioner is capable of lifting 20 pounds, and is capable of lifting 10 pounds frequently. After careful consideration of the entire record, this Administrative Law Judge finds that the Petitioner has the residual functional capacity to perform light work as defined in 20 CFR 404.1567 and 416.967.

Petitioner has relevant past work experience as a camera operator. This Administrative Law Judge finds that working as a camera consists of light work and that Petitioner is capable of performing this past relevant work. Since the objective medical evidence supports a finding that Petitioner is capable of performing this past relevant work then his impairments do not prevent all work for more than 90 days, and he is not eligible for SDA benefits.

#### STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Petitioner has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Petitioner is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he is not disabled. If the Petitioner is not able to do other work and meets the duration requirement, he is disabled.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

The objective medical evidence indicates that the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do less strenuous tasks if demanded of him. The Petitioner's testimony as to his limitations indicates that he should be able to perform light work.

The Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The Petitioner was oriented to time, person and place during the hearing.

The Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Petitioner's ability to perform work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Petitioner is 55-years-old, a person of advanced age, over 55, with a limited education, and a history of semi-skilled work. Based on the objective medical evidence of record Petitioner has the residual functional capacity to perform light work. State Disability Assistance (SDA) is denied using Vocational Rule 202.03 as a guideline.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. Department of Human Services Bridges Eligibility Manual (BEM) 261 (April 1, 2017), pp 1-8. Because the Petitioner does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner not disabled for purposes of the State Disability Assistance (SDA) benefits.

**DECISION AND ORDER**

Accordingly, the Department's determination is AFFIRMED.

KS/nr

  
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Kevin Scully  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]